

United States District Court
Southern District of New York

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S.D. OF N.Y.

Annamarie Trombetta

Plaintiff

Case No. 18-cv-0993-RA-HBP

vs.

**Plaintiff's Response to Motion
To Dismiss**

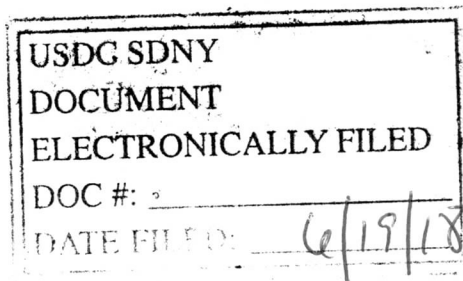
Norb Novocin, Marie Novocin and
Estate Auctions Inc.

Defendants

I, Plaintiff, Annamarie Trombetta, Artist and Sole Proprietor am responding to Defendant's Motion to Dismiss and will address each issue in the Memorandum set forth by Defendant's Attorney Anderson J. Duff.

Response to Defendant's Statement of Facts

I, Annamarie Trombetta began my formal art training in high school which is duly documented in my biography on my website. My biography was falsely and inaccurately used by Estate Auctions Inc. resulted in the sale of a painting that I did not create. I had no knowledge of or participation in the creation of the alleged painting sold by Estate Auctions entitled "Original Oil Painting Man with Red Umbrella" dated 1972. I would have been nine years old. My website created in 2003 documents when I began my formal art training in my biography which always had a copyright symbol and statement **"All work on this site are © Annamarie Trombetta. All rights reserved"**. Aside from the unauthorized use of my name, biography content, as was used in the case by Estate Auctions Inc's description on e Bay,



the use of the word “Original Oil Painting” **means** that the “**Original**” painting was directly and personally created by a particular artist; not a copy or imitation. Estate Auction Inc. used my website biography under the description “Original Oil Painting” ergo creating a false attribution to an original work of art that was sold. The false use of my website for the monetary gain and sale/profit is not legally permissible particularly if I am not the original creator of the oil painting. Secondly, I have always used the same signature for my artwork. My signature looks nothing like the signature that was photo featured in the description by Estate Auction Inc. that was on the infringing painting. To address the Worthpoint.com company issue: The aforementioned company is a third party which posted the facts/data etc. of sales set forth by Estate Auctions Inc. Worthpoint.com did not sell or profit from the sale of this falsely designated painting. as was the case with Estate Auctions Inc.

Plaintiff’s Response to Defendant’s Argument

I Plaintiff, Annamarie Trombetta being duly sworn, hereby deposes and state:

I had no involvement with the knowledge, creation, description nor signing of the signature of “Man with Red Umbrella” dated 1972. The following statements below by Estate Auction were used to describe and sell the falsely attributed **DAMAGED** painting. Estate Auctions Inc. stated on an eBay seller page and listed the Lot “ Original Oil Painting Man with Red Umbrella” dated in 1972. of as being “by Annamarie Trombetta and “signed A. Trombetta.” The listing indicated that the painting was “signed on the bottom and

also on the back it has signed in red on the stretcher , Annamarie Trombetta ‘Gifted’ 1977, ‘Painted’ 1972.” The description states there were 12 photos and two signatures. I found no photos of the painting only a description. There was a photo of a signature “A. Trombetta” which was not my signature. The image size was 48.5 inches tall by 17.5 inches wide said to be in the style of Andre Kohn (I have no idea who this is). There was a **TEAR** in the canvas about 5/8 inches long that Estate Auction described as “ shabby chic”. My very personal and specifically detailed biography was copied and misattributed to “A. Trombetta”. **Estate Auction Inc.’s misattribution and misdescription of the Lot, as well as its unauthorized use of my name, website text, constitute violations of my legal rights. The value of the misattributed painting was \$181.50 for the 48.5 inch by 17.5 inch canvas. My price for this size painting far exceeds this amount and undervalues my financial credibility and worth as well as my name . In addition this effects the value and my present work and my artwork purchased by my collectors. One false sale has effected many people. Last, the fact that the canvas was damage can imply that the quality of the materials used to create the painting were not of substance or a reasonable standard.** Plaintiff asks the court to withstand the cause of action and take into account that along with the false attribution, unlawful use of my biography there is my name listing associated with a **“damaged”** painting all of which I had no part in creating.

I. Lanham Act Claim

I, Annamarie Trombetta ask the court to consider a claim for false advertising and a claim for false endorsement among other claims the court believes is appropriate. I did *not* create described by Estate Auction the “Original” oil painting nor approve verbally or in writing by association therewith, such that the attribution of the work to me likely constitutes a **false designation of origin** which is in violation of the Lanham Act. Secondly it may also constitute a **violation of the moral rights** under the Visual Artists Rights Act as I always had a copyrighted symbol and notice of copyright statement under the biography website. Further there was a photo featuring the signature “A. Trombetta” on the Estate Auction listing. This is NOT my signature and further I have **never** signed any of my artwork with my first initial as was visually posted in the photo featured in the description by Estate Auction “A. Trombetta”. The Estate Auction description claimed there was a second signature on the back in red signed “Annamarie Trombetta”. No photo was available for this claim nor were the 12 photos described on the site. Plaintiff’s false designation of origin claim under the Lanham Act is rightfully presented.

II. VARA CLAIM

I am the artist/author of several Visual works of art. I have produced single copies of various paintings. Each of those paintings is unique. I do not copy, produce or duplicate any of my oil paintings. I have never produced more than 200 original copies of a single painting. In the

context of misattribution rights “ a work of visual art “DEFINITION” refers to the injured author’s body of work . Defendants are incorrect that the work of Visual Art definition in VARA applies to the falsely attributed painting. Defendants Estate Auctions falsely alleged that I, Annamarie Trombetta allegedly created the painting “ 1972 Original Oil Painting Man with Red Umbrella” signed “A.Trombetta” and did so in 1972 when I would have been nine years of age. Plaintiff request for the court that this be granted. Accordingly this argument fails on all merits as I did not execute the oil nor grant permission to use my name or website content at any time.

III. Copyright Infringement

I have registered my website with the copyright office. The application is pending for copyright. I ask the court to stay my portion of my lawsuit until the application from the copyright office is granted. My case number is 1-6689804391.

IV New York Consolidated Laws, Arts and Cultural Affairs Law 14.03

I am a Pro Se` litigant. I do not believe that Congress has preempted my claim under The Arts and Cultural Affair Law 14.3

V. Right of Publicity Claim

I kindly ask the court to read and acknowledge the events preceding this lawsuit. I have done due diligence to confirm the sale by Estate Auction etc. in January 2017.

In January 2017 I hereby confirmed that the painting was sold by Estate Auction to a woman and that Estate Auction has the paper transactions of the sale. It was sold for \$181.50. The description the image size was 48.5 inches tall by 17.5 inches. I confirmed with Norb Novocin that the painting sold despite being damaged. I confirmed that there were two signatures on the painting- front and back. I confirmed that Norb Novocin of Estate Auctions was indeed the seller of this painting on e Bay and it was acquired at an auction somewhere. Norb Novocin then claimed that the painting was "Signed Annamarie Trombetta. I informed Mr. Novocin that he used my website content and that I did Not create the painting he sold signed Annamarie Trombetta. I was told by Norb Novocin that if I wanted to get an attorney than " I SHOULD GO FOR IT".

Following the confirmation of this information I had an attorney write and forward a letter in August 2017 which Marie and Norb Novocin ignored. Following this action, I wrote a complaint with the Better Business Bureau which confirms phone calls in January 2017 and the attorney letter they received in August 2017. The letter falsely states that I threatened to get a lawyer to force them to divulge the buyer's name. Secondly, The Novocins stated that the biography was listed on Ask Art. com. Ask Art had authorization to list my biography and has a membership fee to read the biographical listings. The Content from my biography was word for word. It is a very specific and personal biography. No other A. Trombetta could have the same distinct biography.

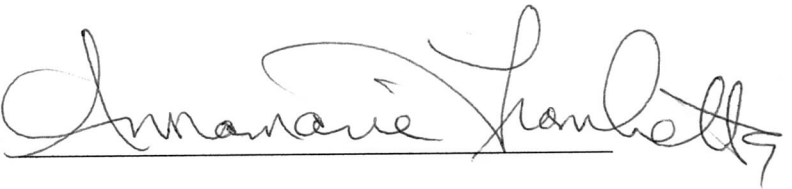
The time, effort and emotional distress to avoid a lawsuit preempted this case . Despite an attorney's effort to dissuade the current situation it proved to be a loss of valued time.

Lastly, the main reason for this lawsuit is to duly document in writing and within the court system that I did NOT paint "Original Oil Painting Man With the Red Umbrella in 1972" when I would have been nine years of age nor did I sign this painting ie: a legal disassociation. I kindly ask the court to consider my efforts and the time lost with regards to the statutes of limitations for the Right of Publicity Claim.

WHEREFORE, the Plaintiff respectfully request the court to move to proceed with the initial complaint and claims.

Wherefore the disbursements, damages of this action including fees, costs and together with such other, further and different as the Court deems just and proper.

Date June 19, 2018

By: 

Annamarie Trombetta

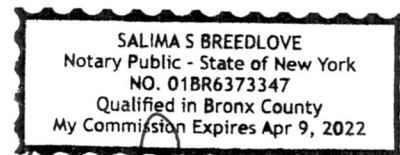
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06/19/18